

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA
4

5 UNITED STATES OF AMERICA,) 3:12-cr-00015-HDM-WGC
6 Plaintiff,)
7 vs.) ORDER
8 CAMERON MUHLENBERG,)
9 Defendant.)
10

11 Defendant filed a 28 U.S.C. § 2255 motion to vacate, set
12 aside, or correct his sentence contending that his sentence should
13 be vacated because the Hobbs Act robbery offense which served as a
14 predicate for his 18 U.S.C. § 924(c) conviction no longer qualifies
15 as a "crime of violence" in light of *Johnson v. United States*, 135
16 S.Ct. 2551 (2015) (ECF No. 135). This court denied defendant's
17 motion on June 29, 2018 (ECF No. 144) based on the Ninth Circuit
18 Court of Appeals' decision in *United States v. Howard*, 650
19 Fed.Appx. 466, 468 (9th Cir. 2016) wherein the court held that
20 Hobbs Act robbery qualifies as a crime of violence under § 924(c).
21 Defendant requests that this court issue a certificate of
22 appealability.

23 The standard for issuance of a certificate of appealability
24 calls for a "substantial showing of the denial of a constitutional
25 right." 28 U.S.C. § 2253(c). The Supreme Court has interpreted 28
26 U.S.C. § 2253(c) as follows: "Where a district court has rejected
27 the constitutional claims on the merits, the showing required to
28 satisfy § 2253(c) is straightforward: The petitioner must

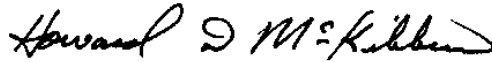
1 demonstrate that reasonable jurists would find the district court's
2 assessment of the constitutional claims debatable or wrong." *Slack*
3 *v. McDaniel*, 529 U.S. 473, 484 (2000); see also *James v. Giles*, 221
4 F.3d 1074, 1077-79 (9th Cir. 2000). The Supreme Court further
5 illuminated the standard for issuance of a certificate of
6 appealability in *Miller-El v. Cockrell*, 537 U.S. 322 (2003). The
7 Court stated in that case:

8 We do not require petitioner to prove, before the
9 issuance of a COA, that some jurists would grant the
10 petition for habeas corpus. Indeed, a claim can be
11 debatable even though every jurist of reason might
12 agree, after the COA has been granted and the case
13 has received full consideration, that petitioner
14 will not prevail. As we stated in *Slack*, "[w]here a
15 district court has rejected the constitutional
16 claims on the merits, the showing required to
17 satisfy § 2253(c) is straightforward: The petitioner
18 must demonstrate that reasonable jurists would find
19 the district court's assessment of the
20 constitutional claims debatable or wrong."

21 *Miller-El*, 123 S.Ct. at 1040 (quoting *Slack*, 529 U.S. at 484).

22 The court has considered the issues raised by defendant, with
23 respect to whether they satisfy the standard for issuance of a
24 certificate of appeal, and the court determines that none meet that
25 standard. The court therefore denies a certificate of
26 appealability in this case.

27 DATED: This 29th day of June, 2018.

28 

UNITED STATES DISTRICT JUDGE